

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF)
 RULES AND PROCEDURES TO IMPLEMENT THE)
 RENEWABLE ENERGY PORTFOLIO STANDARDS) PSC REGULATION DOCKET NO. 56
 ACT, 26 DEL. C. §§ 351-363, AS)
 APPLIED TO RETAIL ELECTRICITY)
 SUPPLIERS (OPENED AUGUST 23, 2005))

ORDER NO. 6697

This 23rd day of August, 2005, the Commission determines and Orders the following:

1. In July, the General Assembly and Governor enacted the Renewable Energy Portfolio Standards Act ("the Act"), 75 Del. Laws ch. 205 (July 12, 2005), codified in main part at 26 Del. C. §§ 351-363. The Act directs each retail supplier of electricity in this State to demonstrate, each year, that it has accumulated a specified level of "renewable energy credits." "Renewable energy credits" are tradable instruments representing electricity derived from "eligible energy sources" or "customer-owned generation." The requirement level of such credits is keyed to a percentage of the supplier's overall adjusted retail load and the percentage increases each year. The Act gives this Commission the duty to implement and enforce the new renewable energy portfolio standards in the case of non-municipal "retail electricity suppliers."¹ The Act charges the Commission to

¹See 26 Del. C. §§ 352(20), 353(a), 358(a) & (b), and 359. The State Energy Office and the Controller General are to monitor compliance by municipalities and municipal companies that supply electricity. See 26 Del. C. §§ 352(12), 358(c). An electric supplier that is an electric rural cooperative will be treated as a municipal supplier if it has exempted itself

complete its start-up tasks and have its implementing regulations in place by July 31, 2006.²

2. The Commission now opens this docket to begin to consider its assigned obligations in implementing the Act. The list of things to be done appears to be long; running from determining what can be certified as an "eligible energy resource," to how, and by whom, "renewable energy credits" are to be tracked. Given the tasks, and given that Staff has identified some questions that might need further exploration or clarification, the Commission is not yet in a position to propose the text for its implementing regulations. Rather, by this Order, the Commission adopts a broad procedural flight path to make sure the Commission's regulations arrive before July 31, 2006. Thus, initially, the Commission sets aside two months for the Staff to conduct informal, but public, workshops in order to better educate Staff. At those workshops, Staff can obtain interested persons' views on the meaning of some parts of the statutory text and also listen to possible scenarios for how the various requirements of the Act can be efficiently implemented. After such workshops, Staff can prepare proposed rules, or other needed documents, for the Commission's review. The Commission would hope to have such drafts by November 10, 2005. If the Commission accepts Staff's drafts, the

from this Commission's authority under the option set forth in 26 Del. C. § 223. 26 Del. C. § 353(a). In addition, a municipal supplier or a cooperative (even if it has not chosen the exemption under § 223) may "opt-out" of the entire portfolio renewable energy credit regime if, by June 2006, it implements an alternative voluntary program offering renewable energy to its customers and participates in an energy fund. 26 Del. C. § 363.

²See 26 Del. C. § 362; 75 Del. Laws ch. 205 § 2 (2005).

proposed regulations will then be subject to scrutiny and comment under the rule-making process dictated by the Administrative Procedures Act.³

3. So far, Staff, and counsel, have identified some instances in the Act where, in their reading, the text allows for various interpretations. Consequently, the Commission specifically invites those persons or entities who had a hand in the drafting of the Act to participate in Staff's initial workshops. While drafters' intent cannot change enacted text, an appreciation of the background for specific language can aid Staff's ability to get a clear view of textual meaning.

4. Also, under the Act's regime, the State Energy Office and the Controller General are given the duty to supervise compliance by municipal electric power entities (who have not chosen the "opt-out" alternative).⁴ The Commission believes it would be beneficial for those other offices and this Commission to act under a shared understanding of the Act's requirements. Consequently, the Commission extends to those offices an invitation to participate both in the informal workshops and the later rule-adoption proceedings.⁵

³The Commission notes that 75 Del. Laws ch. 205 § 6 requires the Commission, in its adoption of regulations, to "promote the use of best industry practices and policies by regulated entities," and to seek public comment and participation and give such public input "great weight." At the same time, the Act also directs the Commission to make its rules as consistent as possible with the rules adopted by other states in the region acting under similar statutory renewable energy portfolio directives. 26 Del. C. § 362.

⁴See 26 Del. C. § 358(c).

⁵The Act also directs the Commission to look to rules adopted by, or decisions made by, the Department of Natural Resources and Environmental Control ("DNREC") to determine whether certain types of sources of energy can

5. The Act also allows the Commission to consider the use of the "Generation Attribute Tracking System" ("GATS") developed by PJM Environmental Services, Inc. ("PJM-EIS"), to assist in both the assignment and tracking of "renewable energy credits."⁶ The GATS system will soon be operational and the utility commissions in both neighboring New Jersey and Maryland have decided to use its functions in administering those jurisdictions' renewable energy procurement regimes. The Commission invites PJM-EIS to participate in Staff's workshops and the subsequent Delaware rule adoption. In particular, the Commission seeks PJM-EIS's views whether its GATS program can satisfy the attributes of a tracking system required by the Delaware Act.⁷ Even more specifically, the Commission asks PJM-EIS whether its GATS system will provide in an Internet-accessible format, available to both other suppliers and the public, current aggregated information on the status of renewable energy credits created, sold, or transferred relative to Delaware.⁸

Now, therefore, **IT IS ORDERED:**

1. That this docket is instituted to adopt rules and regulations and other directives needed to implement the Renewable Energy Portfolio Standards Act, 75 Del. Laws ch. 205 (July 12, 2005),

be labeled "eligible energy resources." See, e.g., 26 Del. C. § 352(6)g., (6)h. The Commission thus also invites DNREC to the workshops to help the Commission understand when that agency will make the called-for determinations.

⁶See, e.g., 26 Del. C. §§ 358(a), 359(b).

⁷See 26 Del. C. § 359(a), (c)-(d).

⁸See 26 Del. C. § 359(d).

codified in main part at 26 Del. C. §§ 351-363, and to govern the Commission's responsibilities under such enactment provisions.

2. That, as an initial step in the process, the Commission Staff shall conduct public informal workshops to better educate the Commission about the terms of the Renewable Energy Portfolio Standards Act and such statute's requirements. The number, timing, place, and agendas for such workshops shall be set by Staff. Staff shall endeavor to have a wide range of interested persons participate.

3. That, after conducting such workshops, Staff shall present to the Commission a draft of a proposed set of implementing rules or regulations as well as recommendations for any other action by the Commission. Staff shall endeavor to file its draft rules and recommendations by November 10, 2005.

4. That the Secretary shall initiate a service list for participants in the informal workshops conducted under Ordering paragraph 2. Persons or entities choosing to be included on the service list will receive notice of the workshop and documents considered at those workshops. Staff shall, if necessary or appropriate, provide public notice of the informal workshops.

5. That the Secretary shall publish in the manner described below the notice attached as Exhibit "A". Such notice shall be published in The News Journal newspaper on or before September 1, 2005. The notice shall also be sent to the Delaware Registrar of Regulations for publication in the notice section of the Delaware Register of Regulations.

6. That the Secretary shall send by United States mail a copy of this Order with exhibit to:

- (a) the Division of the Public Advocate;
- (b) the State Energy Coordinator of the State Energy Office;
- (c) the Controller General of Delaware;
- (d) PJM-Environmental Services, Inc.; and
- (e) the Secretary, Department of Natural Resources and Environmental Control.

7. After receipt of the documents described in Ordering paragraph 3, the Commission will enter such further Orders as may be appropriate.

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Dallas Winslow
Commissioner

/s/ Norma J. Sherwood
Acting Secretary

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

**NOTICE OF INITIATION OF
DOCKET AND PROCEEDINGS TO IMPLEMENT THE
RENEWABLE ENERGY PORTFOLIO STANDARDS ACT**

In 2005, the General Assembly and Governor enacted the Renewable Energy Portfolio Standards Act ("the Act"), 75 Del. Laws ch. 205 (July 12, 2005). The Act will require all entities selling electric supply in Delaware to meet, in each compliance year, certain minimum thresholds for "renewable energy credits." The credits are linked to electricity produced by "eligible energy resources" and by "customer-owned generation."

7

both implementing the renewable credit regime and supervising future compliance, and the availability of the PJM-EIS GATS system to assist in monitoring compliance. After the workshops, the PSC Staff will propose draft regulations that will be considered by the PSC and then proposed for adoption under the rule-making procedures of the Delaware Administrative Procedures Act.

If you wish to be given notice of these workshops, you must file to be included on the PSC's initial service list in this docket. To be listed, you must deliver a letter to the address set out below. You must include your name, organization (if any), address, voice and facsimile telephone numbers, and Internet e-mail address. Such letter should be delivered to:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904
Attn: PSC Reg. Dckt. No. 56

You should try to deliver that letter by September 12, 2005. You can read PSC Order No. 6697 (Aug. 23, 2005) (available at www.state.de.us/delpsc) to gain more information about the initial stage of this matter. You can also direct inquiries to David Bloom at either 1-800-282-8574 (Delaware only) or (302) 739-4247 (text telephone also) or by Internet e-mail addressed to david.bloom@state.de.us. The public is particularly invited to participate in this docket.